No. 227

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In the Supreme Court Of the United States

OCTOBER TERM 1956

GREAT NORTHERN RAILWAY COMPANY, a corporation,

Petitioner,

vs.

LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, a voluntary association and Labor Union, HELEN M. BOUCHEY, individually and as President of said Labor Union; DORIS M. TRAYNOR, individually and as Recording Secretary of said Labor Union; RAY F. LINDBERG, individually and as Financial Secretary of said Labor Union, LEONA L. STEIN and JOSEPH S. BOGARD,

Respondents.

Petition for Writ of Certiorari With Brief

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Attorneys for Petitioner.

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IN THE
SUPREME COURT
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GREAT NORTHERN RAILWAY COMPANY,
a corporation,

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LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, a voluntary association and Labor Union, HELEN M. BOUCHEY, individually and as President of said Labor Union; DORIS M. TRAYNOR, individually and as Recording Secretary of said Labor Union; RAY F. LINDBERG, individually and as Financial Secretary of said Labor Union, LEONA L. STEIN and JOSEPH S. BOGARD,

Respondents.

PETITION FOR WRIT OF CERTIORARI WITH BRIEF

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Great Northern Railway Company, the above named petitioner respectfully shows:

JUDGMENT BELOW

This petition is directed against the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered against this petitioner and in favor of respondents reported in 231

Fed. (2) and a copy of which opinion and judgment is set out at page III of appendix.

JURISDICTION

That said judgment was dated and entered April 18, 1956; and the Act of Congress of June 25, 1948, 62 Stat. 928 (28 USCA 1254) confers upon this Court jurisdiction to review said judgment.

QUESTION

The Petition here is directed at the judgment and decisions of the Courts below, sustaining defendants' and respondents' Motion in the District Court to dismiss the Complaint

> "on the ground that the Court lacks jurisdiction to issue the preliminary injunction prayed for because the action involves a labor dispute within the provisions of 29 U.S.C.A., Chapter 6, and 29 U.S.C.A., Section 52, and to dismiss the First Cause of Action because the First Cause of Action fails to state a claim against defendants upon which relief can be granted."

The Courts below have erroneously held that the Petitioner, Railway Company, has no right to injunctive relief against the Union pickets based solely upon grounds, either (a) to protect its property rights—the right to do business as a common carrier—as held in Dorchy v. Kansas (272 U.S. 306, 71 L. Ed. 248), or (b) to enable it to perform its duties as a common carrier, imposed by the Interstate Commerce Act (24 Stat. 382, 49 U.S.C.A. 8), and avoid the penalties imposed by that Act

for failure of the carrier to furnish the service to the public, including a struck plant.

That question is of vital importance to the commerce and welfare of the United States of America, and should be decided by this Court, in view of the fact that the decision here for review is contrary to the overwhelming number of decisions in the lower Federal Courts and Courts of last resort in three different States, and the Federal labor laws seem neither (a) to prohibit injunctive relief unless some relief is demanded of the Petitioner, Railway Company, in the labor dispute, or (b) unless the Railway Company is a party to the labor dispute, such as would give the National Labor Relations Board exclusive jurisdiction of the matter under the Taft-Hartley labor relations acts of the Congress. (62 Stat. 991, U.S.C.A. Sup. 160 (a).

STATUTES INVOLVED

(1) Duty of common carriers to furnish service, 41 Stat. 474-479 (49 USCA Sec. 1). Appendix page. VII.

(2) Labor Law Restrictions on Injunctive Relief in Federal Courts, 38 Stat. 738 (29 USCA Sec. 52), 47 Stat. 70 USCA Sections 101, 104, 107), 49 Stat. 449-450, 452, 453, 1921 (29 USCA Sections 151, 152, 157, 158). Appendix pages X, etc..

(3) Jurisdiction and powers of National Labor Relations Board 49 Stat. 453 and 1921 (29 USCA Section 160). Appendix page XXI.

FACT STATEMENT

A labor dispute has existed for upwards of two years between respondents and the Foley's Mill located on the railroad of Petitioner Great Northern Railway Company in the City of Helena, Montana. In that labor dispute no relief or claim or demand is made by the labor union against petitioner, Railway Co.

By its service Order No. 904, issued July 7, 1955, the Interstate Commerce Commission required the petitioner, Railway Company to place loaded cars and remove empty cars between its yards and shippers served from that yard on a 24-hour schedule, subject to penalties for failure, and this action was brought in the District Court, by reason of said order and generally under the statutory requirements that interstate rail carriers serve the public without discrimination, with penalties for discrimination.

In variably as petitioner undertakes to remove or spot freight cars from or to the Foley's Mill, respondents have maintained a picket line by close formation on petitioner's railroad as that railroad leading to the Foley's Mill crosses Roberts Street. Petitioner's switch crew refuses to cross that picket line, with result that once or twice a week for the past several years petitioner has been required to bring the 95miles from Great Falls, Montana, to Helena, Montana, three of its supervisory officials to do the switching of interstate property to and from the Foley's Mill. On arrival of the substitute

switch crew at Helena, the local police are called up, and the police respond, remove the pickets and the substitute switch crew furnishes the rail service to the Foley's Mill.

Since January 1, 1954, there have been upwards of 152 such cars to be handled at an added cost of 165 man days and a money cost of upwards of $5,500 to petitioner.

For its failure to serve a shipper, and for its failure to comply with said order, petitioner is subject to penalties up to $500 for each offense, plus $50 per day of delay, 41 Stat. 474-489 (49 USCA Sec. 1 (17).

Contrary to the holding in the Court below, the record discloses that petitioner has not been and is not now, by means of such substitute crews of advisory officials, able to furnish regular service to the struck plant, but by reason of the fact that such substitute crews are located only at Great Falls, Montana, some 95 miles away, and are few in numbers, petitioner is only able to furnish rail service to the struck plant once or twice a week, instead of the daily service required by law, and for these delays, is subject to continuing damage claims by the shipper and to statutory penalties for so discriminating against this particular shipper.

Respondents threaten to continue the picketing in future.

Federal Court Jurisdiction is given to enforce any order of the Interstate Commerce Commission 62 Stat. 931 (28 USCA Sections 1336, 1337).

ARGUMENT

Petitioner, Railway Company, would seem to be entitled to injunctive relief by its action brought directly in the Federal District Court to remove the Union pickets from its railroad, (a) to protect its property right to do business as a common carrier, and (b) to enable it to comply with its duty and avoid the penalties under the Federal Interstate Commerce Acts of Congress to serve all the public, including the struck plant, unless the Federal labor laws have changed the rule held in Dorchy v. Kansas, 272 U.S. 306, 71 L. Ed. 248. Petitioner, Railway Company, would not seem to have forfeited that right to injunctive relief by its delay in bringing this action, petitioner expecting the strike at the Foley's Mill might be settled in the meantime; or, stated differently, the right of the Labor Union, respondents, to commit the wrong, may not be acquired by prescription.

Since the passage of the Norris-LaGuardia Act the Federal District Courts in seven different states, and the courts of last resort in three states have held for the right of the rail carrier to injunctive relief against pickets under fact situations such as we have here, and the holdings in those ten cases are in conflict with the holding in this case in the United States Court of Appeals for the Ninth Circuit.

Erie R. Co. v. Local 1286 of Longshoremen, etc. (N.Y.) 117 F. Sup. 157.

Pacific Gamble Robinson Co. v. M. & St. L. Ry. (Minn.) 85 F. Sup. 65.

Illinois C. R. Co. v. International Brotherhood of Teamsters (La.) 90 F. Sup. 640.

Louisville & N. R. Co. v. Local Union, etc. Woodworkers, etc. (Ala.) 104 F. Sup. 748.

Montgomery Ward, etc. v. Northern Pac. Terminal Co. (Ore.) 127 F. Sup. 475.

Southern Pacific v. Cannery Warehouse (Ore.) 127 F Sup. 703.

Hunt v. Crumbock (Pa.) 44 F. Sup 796.

Northwestern Pac. R. Co. v. Lumber & Sawmill Workers Union (Calif.) 189 P. (2) 227.

Burlington Transpn. Co. v. Hathaway (Iowa) 12 NW (2d) 167.

General Drivers, etc. Union v. American Tobacco Co. (Ky.) 264 S.W. (2d) 250.

Because of the conflict in the decided cases, the question should be settled in this Court, as to whether or not, (a) the rail carrier is entitled to injunctive relief in the courts against picketing, and (b) if not, is that because the presence of the pickets relieve the carrier of its obligation to serve the struck plant and from the statutory penalties for failbure to serve the struck plant; or (c) is that because the facts here disclose a "labor dispute" over which the National Labor Relations Board has jurisdiction?

Wherefore your petitioner respectfully prays that a Writ of Certiorari be issued out and under the seal of this Court, directed to the United States

Court of Appeals for the Ninth Circuit, commanding the said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the United States Court of Appeals for the Ninth Circuit in the case therein entitled, No. 14934.

Great Northern Railway Company, a corporation, Appellant.

vs.

Lumber od Sawmill Workers, Local Union No. 2409, a voluntary Association and Labor Union, Helen M. Bouchey, Individually and as President of said Labor Union, Doris M. Traynor, individually and as recording secretary of said Labor Union, Ray F. Lindberg, individually and as Financial Secretary of sand Labor Union, Leona L. Stein and Joseph S. Bogard, Appellees.

To the end that said case may be reviewed and determined by this court, as provided in 62 Stat. 928 (28 USCA 1254), providing for review on Writ of Certertori of decisions of United States Courts of Appeals; and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and in conformity to said act; and that the judgment of the United States Court of Appeals for the

Ninth Circuit in said case and every part thereof may be reversed with directions by this Honorable Court, and so your petitioner will ever pray.

Great Northern Railway Company,
a corporation.

By Taylor B. Weir, Attorney for Petitioner (Address: 301 First National Bank Building, Helena, Montana).

Edwin C. Matthias,
Hallan Huffman,
Newell Gough, Jr.,
of Counsel.

Due personal service of foregoing petition and supporting brief in above matter admitted this ..... day of ....., 1956.

Attorney for Respondents
(Address: Helena, Montana)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Great Northern Railway Company,
a corporation,

Appellant,

vs.

Lumber and Sawmill Workers,
Local No. 2409, a Voluntary Association
and Labor Union; etal.,

Appellees.

No. 14,934
April 18, 1956

Appeal from the United States
District Court
for the
District of Montana

Before: STEPHENS and BONE, Circuit Judges;
and GOODMAN, District Judge.

LOUIS E. GOODMAN, District Judge.

The District Court, on motion of defendant below (appellee here) dismissed plaintiff's (appellant's) cause of action for a permanent and temporary injunction restraining appellee from picketing on or about appellant's railroad right-of-way and from delaying or interfering with appellant's delivery of freight to a Mill, with which appellee was engaged in a labor dispute.

District Judge Murray, in his opinion below, ... Fed. Supp. ....., has set out adequate and

compelling legal reasons why the complaint failed to tender sufficient legal grounds for injunctive relief. Upon his opinion, the judgment below should be affirmed.

Appellant has urged us, nevertheless, to reverse upon the broad ground that appellant is entitled to injunctive relief to enable it to comply with its obligations to furnish interstate railway service to all the public (49 USC 1 (17)) including shippers involved in labor disputes. The resolution of such an issue necessarly involves the application of the Norris-LaGuardia Act, 29 USC 104-113 and the Labor Management Relations Act 29 USC 104-113 and the Labor Management Relations Act 29 USC 141 et seq.

The District Court felt it unnecessary, as we do, to reach this question. For the facts of this case, as alleged in the complaint, and, deemed true for the purpose of the motion to dismiss, do not present a cause of equitable relief under well recognized legal doctrine. The acts of appellee complained of have been continuing since January 1, 1954. The complaint was not filed until September 14, 1955. So the appellant was allegedly suffering under a burden for twenty months before suit, a burden which, suddenly, after that long period of time, blossomed into a claimed need for immediate drastic remedy. Furhermore, it appeared that the extent of the hindrance to appellant was merely that it had to use otler than regular employees to deliver the freight—a detriment easily and admit-

tedly compensable in dollars. Indeed the allegations of the complaint affirmatively show that the appellant in fact was not prevented from making any deliveries of freight.

Under these circumstances, to reach and rule upon the broad question tendered by appellant would amount to the issuance of an advisory opinion. This is a "consummation" devoutly to be avoided, for that is the way bad law is made.

Affirmed.

(Endorsed:) Opinion. Filed April 18, 1956.
Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Great Northern Railway Company,
a corporation,

Appellant,

vs.

Lumber and Sawmill Workers, Local Union No. 2409, Voluntary Association and Labor Union; et al.,

Appellees.

JUDGMENT

Appeal from the United States District Court for the District of Montana.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Montana, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this court, that the Order of the said District Court in this cause be, and hereby is affirmed.

(ENDORSED) Judgment
Filed and Entered: April 18, 1956.
PAUL P. O'BRIEN, Clerk.

— VII —

DUTY OF CARRIER TO FURNISH SERVICE—PENALTIES

(4) *Duty to furnish transportation and establish through routes; division of joint rates.* It shall be the duty of every common carrier subject to this chapter engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this chapter participating therein which shall not unduly prefer or prejudice any of such participating carriers. (41 Stat. 474-479, 49 USCA 1 (4).)

(8) *Liability in damages to persons injured by violation of law.* In case any common carrier subject to the provisions of this chapter shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a

reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case. (20 Stat. 49 USCA Sec. 8.)

(10) *Violation of regulations by carriers; discrimination; penalties.* (1) *Violation by carrier or officer; penalty.* Any common carrier subject to the provisions of this chapter, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this chapter required to be done, or shall cause or willingly suffor or permit any act, matter, or thing so directed or required by this chapter to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed $5,000 for each offense: PROVIDED, That is the offense for which any person shall be convicted as aforesaid shall be

an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property or the transmission of intelligence, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. (41 Stat. 483, 49 USCA Sec. 10 (1).)

— X —

LABOR LAWS

52. STATUTORY RESTRICTION OF INJUNCTIVE RELIEF

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employee, or between employers and employees, or between employees, , or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advbising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and law-

ful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. 38 Stat. 738, 29 USCA, Stat. 52.

101. ISSUANCE OF RESTRAINING ORDERS AND INJUNCTIONS; LIMITATION; PUBLIC POLICY

No court of the United States, as defined in sections 101-115 of this title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections. 49, Stat. 70, 29 USCA, Sec. 101.

104. ENUMERATION OF SPECIFIC ACTS NOT SUBJECT TO RESTRAINING ORDERS OR INJUNCTIONS

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any